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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20540

FILE: B-188220

DATE: February 23, 1977

MATTER OF: Sargent Industries

**DIGEST:**

Potential second-tier subcontractor's protest concerning contract award by first-tier subcontractor will not be considered on merits because protest does not fall within any of the stated exceptions of Optimum Systems, Incorporated, 54 Comp. Gen. 767 (1975), 75-1 CPD 166, under which GAO considers protests of awards of subcontracts.

Sargent Industries (Sargent) protests the award to another company of a subcontract for liquid metal valves by the Atomic International Division of Rockwell International (Atomics). The procurement arose from a cost type subcontract which Atomics has with Westinghouse Electric Corporation (Westinghouse) which, in turn, has a cost type prime contract with the Energy Research and Development Administration (ERDA) for the management of ERDA's Clinch River Breeder Reactor Project.

This, then, is a protest at the second-tier subcontract level concerning the award of a second-tier subcontract. This Office will consider such protests under the circumstances enumerated in Optimum Systems Incorporated, 54 Comp. Gen. 767 (1975). See Chemithon Corporation, B-186713, December 16, 1976, 76-2 CPD 502; Automatic Laundry Company of Dallas, B-185920, July 13, 1976, 76-2 CPD 38. It is recognized, however, that as the subcontract tiers increase, the involvement by the Government in such subcontracts is necessarily more difficult to establish. It therefore becomes more difficult to meet the criteria required by Optimum Systems before consideration of a protest on the merits will be given.

Sargent states that under their respective cost type contracts, Atomics and Westinghouse are acting as procurement agents whose procurements are made "for" the Government and that the subcontract costs of Atomics are passed through Westinghouse to the Government. Sargent asserts that under its regulations, ERDA supervised and approved all phases of the procurement process resulting in the award which Sargent protests and that ERDA

evaluated and approved the subcontract. Sargent further contends that because Atomics disregarded the selection provisions of its RFP and the ERDA regulations and did not select the low responsive bidder with the best technical qualifications and experience, bad faith and bias in the selection process are apparent.

In Optimum Systems, Incorporated, supra, our Office held that we would consider protests concerning the award of subcontracts by prime contractors only in certain circumstances. Basically, consideration is provided in five areas: first, where the prime contractor is acting as purchasing agent of the Government; second, in cases where the Government's active or direct participation in the selection of the subcontractor has the net effect of causing or controlling the rejection or selection of a potential subcontractor, or has significantly limited subcontract sources; third, fraud or bad faith in Government approval of the subcontract award or proposed award is shown; fourth, where the subcontract award is "for" an agency of the Federal Government; and fifth, where the questions concerning the awards of subcontracts are submitted by officials of Federal agencies who are entitled to advance decisions from our Office.

In the Optimum Systems case, we held that where, in addition to the approval of the subcontractor selection, the agency's representatives reviewed the RFP, attended the offeror's conference and negotiation sessions with each offeror and made on-site visits to the offerors during which they asked and answered questions, the nature of the agency's involvement in the subcontract process was not sufficient to warrant consideration of the subcontractor's protest. Sargent has alleged no facts equalling the agency's involvement in the Optimum Systems case. It has presented no evidence to indicate that Atomics was a purchasing agent for ERDA, that Atomics' selection for award of the subcontract was not independently made or that ERDA's involvement in this procurement had the net effect of causing or controlling Atomics' selection.

We disagree with Sargent's contention that under Optimum Systems, this Office will entertain protests concerning subcontract awards where bad faith in the "selection process" is shown. Bad faith in the selection process is not enough. Bad faith on the part of the Government procuring officials in approving the subcontract award must be shown. Litton Industrial Products, Inc., B-181676, November 26, 1974, 74-2 CPD 291; Probe Systems

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Incorporated, B-182236, January 2, 1975, 75-1 CPD 2, April 25, 1975, 75-1 CPD 260 and June 15, 1976, 76-1 CPD 375. We also disagree with Sargent's contention that bad faith and bias are apparent from Atomics' failure to select the offeror (Sargent) with the lowest price and the best proposal and qualifications. Under the facts presented by Sargent, such a contention is purely speculative.

Sargent's allegations that the award by Atomics was not in the best interests of the Government do not bring this case within the exceptions under which this Office will consider a protest by a subcontractor. Rantec Division of Emerson Electric Company, B-185250, December 15, 1975, 75-2 CPD 304.

Because none of the bases under which we will consider protests concerning awards of subcontracts has been shown to exist, we must decline to consider the merits of the protest.

  
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General Counsel